

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
Implementation of the Telecommunications Act)	CC Docket No. 96-115
Of 1996, Telecommunications Carriers' Use of)	
Customer Proprietary Information and Other)	
Customer Information)	
)	
Petition of 800 Response for Declaratory Relief)	
Or Further Rulemaking)	
To: The Commission		

REPLY COMMENTS OF
800 RESPONSE INFORMATION SERVICES LLC

In a Petition submitted in the above-captioned proceeding, 800 Response Information Services LLC ("800 Response") has requested the Commission to issue a ruling that the provisions of Sections 202, 222 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 202, 222 and 251, prohibit carriers from "block[ing] interconnection to their location platform for toll-free calls initiated on their networks, or to otherwise impose upon connecting carriers and providers of toll-free telephone service an obligation to obtain the consent of customers to use their location for purposes of routing their calls to a toll-free number." With one notable exception, reply comments on the Petition have supported its prayer for relief on both statutory and policy grounds.¹

¹ See, e.g., Comments of Association for Toll Free Professionals, filed October 18, 2018, Comments of Windstream Services LLC, filed October 24, 2018, Comments of Alliance for

By its attorney, 800 Response hereby replies to the comments of CTIA, the sole objecting party. CTIA opposes the 800 Response prayer for relief on the grounds that the Petition “effectively asks the Commission to compel commercial mobile radio service (“CMRS”) providers to share their customer’s location information without any basis in the statute or rules,” and that the relief sought by 800 Response would “undermine any protections that wireless service providers have established for their customers’ information through commercial agreements.” For the reasons set forth herein, 800 Response respectfully submits that CTIA has grossly mischaracterized the Petition’s prayer for relief and urged the Commission to endorse questionable practices that would result in a confusing, contradictory and unmanageable patchwork of obligations governing interconnection and privacy.

CTIA Has Mischaracterized The Prayer For Relief. In its effort to dismiss the 800 Response Petition, CTIA mischaracterizes several aspects of the pleading and its prayer for relief.

First and foremost, CTIA’s assertion that 800 Response “effectively asks the Commission to compel commercial mobile radio service (“CMRS”) providers to share their customer’s location information without any basis in the statute or rules” is simply untrue. What 800 Response has requested is a ruling by the Commission that confirms the statutory obligations of wireless carriers to comply with the interconnection and privacy requirements of the Act as they relate to other connecting carriers, including providers of toll-free number service. At present wireless carriers are violating those statutory obligations by denying, or imposing

Telecommunications Industry Solutions, filed November 19, 2018, and Comments of Somos, Inc., filed November 19, 2018.

unreasonable restrictions on, access to critical location information essential to the efficient routing of toll-free calls.

In this regard, CTIA further obfuscates the facts by referring to 800 Response as a location-based service provider.² By doing so, CTIA conflates regulated carriers such as 800 Response, which require location information at a pinpoint in time in order to correctly route and bill calls, with smartphone application providers and other businesses, some of which have recently been highlighted in the news and whose services are based on storing, processing, sharing, selling or otherwise monetizing a steady stream of location information, often without the consumer's knowledge or consent. See ATIS Comments, n. 6.

While 800 Response and other telecommunications providers who have commented in this proceeding may obtain location information from the same aggregators of location information which contract with wireless carriers and serve as a conduit for the flow of such information to LBS providers, telecommunication service providers are purchasing and using that same location information for the limited purpose of fulfilling their statutory mandate to route calls in accordance with the direction and requirements of their customers. The imposition by wireless carriers of untenable requirements on interconnecting carriers as a condition to the provision of location information undermines the ability of 800 Response to continue offering the specialized toll-free and Shared Use services with which it has

² CTIA Comments, p. 3. Surprisingly, nowhere in its Best Practices and Guidelines for Location-Based Services does CTIA provide a definition of Location-Based Services, http://files.ctia.org/pdf/CTIA_LBS_BestPracticesandGuidelines_04_08.pdf ("Guidelines"), and it is worth noting that none of the examples of LBS services set forth in Best Practices and Guidelines include connecting carriers and toll-free services which rely access to location data to correctly route and bill calls. It would appear that an LBS provider is any entity that CTIA says it is.

served thousands of businesses and millions of those businesses' customers over the almost 30 years since the Commission opened toll-free service to competition.³

The core issue in the 800 Response Petition pertains not to LBS providers, nor to the obligations of wireless carriers to LBS providers, but to the reciprocal statutory obligations of wireless carriers to connecting carriers, including toll-free carriers, all of whom are telecommunications carriers subject to Title II requirements. By denying or setting impractical and unreasonable requirements for access by telecommunications providers to information essential to the correct routing and billing of calls, wireless carriers not only violate their own Title II interconnection obligations, but effectively prevent carriers such as 800 Response from performing their own statutory mandate.

Finally, and most tellingly, CTIA alleges that the 800 Response Petition “does not allege any failure to interconnect.” CTIA Comments, p. 5. The course of conduct of wireless carriers described in the Petition, however, demonstrates above all a willful interference with the right of carriers to interconnect with wireless networks through the imposition of unreasonable, onerous demands.

CTIA's Private Industry Solution is Unworkable. To address the issues 800 Response has raised, CTIA would have the Commission defer to CTIA's Best Practices and Guidelines for Location-Based Services, and private commercial agreements between wireless carriers and LBS providers. CTIA asserts that the Commission “should not set a ceiling” on such private initiatives, and that the relief sought by 800 Response would “undermine any protections that wireless service

³ 800 Response has several customers who have been using such services continuously for over 25 years.

providers have established for their customers' information through commercial agreements."

800 Response respectfully submits that this "solution" is unworkable, irrelevant and unlawful. As noted above, the core issue which 800 Response has presented concerns the statutory interconnection obligations of wireless carriers on the one hand, and connecting carriers, including toll-free service providers on the other. CTIA's suggestion that its Best Practices and Guidelines for LBS providers, which are not subject to Title II of the Act, should supersede the requirements of Title II, is specious at best. It should be self-evident that wireless carriers cannot evade their statutory responsibilities by relying on any industry guidelines and voluntary private commercial arrangements based upon such guidelines. While CTIA asserts that "carriers should be given flexibility to provide their customers with even greater privacy protections that [sic] are enacted into law," CTIA Comments, p. 6, it appears to be oblivious to the fact that the Guidelines it has promulgated and the extra-legal draconian measures demanded of interconnecting carriers by certain of its members in the name of privacy protection have effectively nullified the interconnection rights of other carriers.

CTIA's assertion is all the more surprising in light of its participation in a previous Declaratory Ruling proceeding in which the Commission reaffirmed the primacy of Section 222 of the Act in matters of privacy, making it clear that best practices and codes of conduct developed by the industry are no substitute for the

“longstanding, well known, and judicially tested rules” that implement Section 222.⁵


CTIA also ignores the fact that, as a regulated telecommunications carrier, 800 Response is governed by the same CPNI requirements as CTIA’s own members.

Carried to its logical conclusion, the industry solution advanced by CTIA would result in a confusing, inconsistent and infeasible patchwork of interconnection practices among wireless carriers, some of whom have already demanded that toll-free providers agree to privacy conditions which contravene both the spirit and the letter of Title II of the Act, and should not be countenanced.

Respectfully submitted,

800 Response Information Services LLC

By its Attorney



Eric Fishman
Fishman Advisors PLLC
400 Central Park West
3R
New York, New York 10025
240-475-0620
eric@fishmanadvisors.com

December 3, 2018

⁵ In the Matter of Implementation of the Telecommunications Act of 1996 Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, FCC 13-89, released June 27, 2013, https://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0628/FCC-13-89A1.pdf.